INVESTIGATIVE SUMMARY

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

UNIT: Century Station
DATE: May 09, 2012
TIME: 1830 hours
LOCATION: [redacted] Phillips Avenue, Lynwood, CA 90262
URN#: 912-06474-2118-053
IAB#: FO2312648

NATURE OF INCIDENT:

On-call Internal Affairs Bureau personnel assumed the handle on a force investigation after learning that Deputies Robert Lavoie and Nicholas Saldivar were involved in a force incident with Suspect Freddy Marquez in which the suspect sustained a fracture to his left cheek and a fracture to his nose.

On May 9, 2012, Century Sheriff Station deputies responded to an assault/possible mentally ill person call at [redacted] Phillips Avenue in the City of Lynwood. Deputy Lavoie was the first to arrive at the location. He took a position to the north of the location. As he drove southbound on Phillips Avenue, he observed a six foot tall male Hispanic, approximately 280 pounds (later identified as Suspect Freddy Marquez), walking southbound on Phillips Avenue in the street holding a red and black baseball bat with both of his hands.

> **IAB Note:** The suspect's [redacted] called Century Sheriff's Station and stated her [redacted] had mental issues and he hit their [redacted] She stated the suspect had been in jail for hitting their [redacted] before and that he was a Paranoid/Schizophrenic who was on medication. See Exhibit "E" for CD containing audio of the call for service.

The suspect looked over his shoulder toward Deputy Lavoie's direction. The suspect then stopped walking and turned to face a Chevrolet Monte Carlo (License #[redacted]) which was parked along the west curb line in front of [redacted] Phillips Avenue. The suspect swung the baseball bat at the vehicle and shattered the driver's door window. Deputy Lavoie observed several other vehicles in the immediate area with broken windows and shattered glass on the ground below the vehicles.

Deputy Lavoie stopped his patrol vehicle approximately 15-20 feet away from the suspect. He exited his patrol vehicle and gave the suspect verbal commands to drop the bat. The suspect faced Deputy Lavoie and raised the bat with both of his hands over his right shoulder. Deputy Lavoie gave the suspect another command to drop the bat. The

suspect lowered the bat, and quickly threw it toward Deputy Lavoie. The bat landed approximately five feet west of Deputy Lavoie. After the suspect no longer had the bat in his hands, Deputy Lavoie ordered the suspect to lay on the ground. The suspect complied, lying on his stomach with his arms stretched out to both sides.

Deputy Lavoie advised SCC Dispatch that he was detaining the suspect at gunpoint and waiting for back-up in order to safely take the suspect into custody. Seconds later, Deputy Saldivar arrived at the scene and positioned himself to the left of Deputy Lavoie.

> **IAB Note:** Aero bureau was above the scene and advised SCC and assisting units that a second deputy had arrived on the scene.

When Deputy Saldivar arrived, Suspect Marquez began to put his hands underneath his body and push himself off of the ground. Both deputies Lavoie and Saldivar ordered the suspect to stay on the ground. The suspect did not comply. He stood up, placed his feet apart, and clenched his fists in front of his face. The suspect then started walking at a quick pace toward Deputies Lavoie and Saldivar. As the suspect closed the distanced between himself and the deputies, the deputies formulated a quick plan to perform a team takedown.

> **IAB Note:** See Exhibit "B" for CD containing radio traffic of Deputy Lavoie advising that he was detaining one suspect at gunpoint, the detention quickly evolving into deputies involved in a fight with the suspect, and Deputy Lavoie requesting a unit with a Taser to respond to the location.

Suspect Marquez came within six feet of the deputies and swung at Deputy Lavoie's head with his fist. The suspect missed Deputy Lavoie and his body became off balanced. Deputy Saldivar wrapped his arms around the suspect's upper body from behind and sat on the ground, causing the suspect's body to land on top of him. Deputy Lavoie restrained the suspect's feet, as Deputy Saldivar rolled the suspect onto his stomach. While on the ground, the suspect resisted the deputies. He rolled back and forth, attempting to strike the deputies with his elbows and kicking his legs.

While deputies Lavoie and Saldivar were attempting to handcuff the suspect, the suspect was able to get his left arm free. He used his left arm to push his body approximately six to eight inches off the ground while the deputies were trying to hold him down. Deputy Saldivar hit the suspect three times with his right fist in the nose using a hammer motion, in attempts to stop the suspect from fighting. Deputy Lavoie punched the suspect two times in the head/face area with his right fist while ordering the suspect to stop fighting. The suspect did not comply with Deputy Lavoie's orders. Deputy Lavoie hit the suspect two more times in the head/face area in order to gain compliance. The deputies managed to handcuff Suspect Marquez. Once the suspect was handcuffed, he stopped struggling with the deputies. The suspect was placed in the backseat of the patrol vehicle without further incident.

INVOLVED PERSONNEL:

Lavoie, Robert – Deputy #[redacted]
Century Station
Unit # 212E1
Field Operations Region II

Date of Employment: 01/24/2000
Date Assigned to CEN: 10/01/2006
Prior Shooting Incident(s): 1
Prior Founded Force Incidents: [redacted]

Saldivar, Nicholas – Deputy #[redacted]
Century Station
Unit # 212D
Field Operations Region II

Date of Employment: 01/04/2001
Date Assigned to CEN: 06/10/2007
Prior Shooting Incident(s): [redacted]
Prior Founded Force Incidents: [redacted]

INVOLVED SUSPECT:

Marquez, Freddy
[redacted]

Sex:	Male
Race:	Hispanic
Date of Birth:	04-15-78
Height:	510
Weight:	250
Booking #	3151280
Charge:	245(a) (4) PC, 245(c) PC, 69 PC, 594(A)
Injury:	Zygoma Fracture (face bone), Nasal Fracture (broken nose), Subconjunctival Hemorrhage (broken blood vessel in the white portion of the eye).

The Consolidated Criminal History System reveals that Suspect Marquez has prior

[redacted]

IAB Note:
Suspect Marquez has a history of Paranoid/Schizophrenia.

SWORN WITNESS:

Vargas Machucha, Michael-Deputy #[redacted]
Aero Bureau
Air 21
Office of Homeland Security

CIVILIAN WITNESSES:



[redacted] F/H [redacted]

[redacted] M/H, [redacted]

INVOLVED EMPLOYEE STATEMENTS:

Deputy Robert Lavoie, #[redacted]

Deputy Lavoie was interviewed on November 6, 2012, by Sergeants Brenda Parker and Laura Haynes at 1013 hours. The interview was audio recorded.

Deputy Lavoie said he was responding to an assault, 5150 call. He said during coordination of the call, he was told to go to the north of the location. He said as he drove southbound on Phillips Avenue, he could see a male Hispanic walking southbound on the street, carrying a baseball bat. The suspect was walking in front of him along the west curb line near the cars parked along the west curb line. Deputy Lavoie said he noticed the suspect was holding a bat. He said the suspect looked in his direction, then stopped and faced the cars that were parked next to him. The suspect swung at a car with the baseball bat, and busted its driver's side window.

Deputy Lavoie said he stopped his patrol vehicle approximately15 to 20 feet away from the suspect. He stepped out of his patrol vehicle and stood at the door frame. Deputy

Lavoie said the suspect turned, faced him, and raised the bat over his left shoulder with both hands. Deputy Lavoie said he perceived the action by the suspect to be his intention to possibly attack him with a deadly weapon. Deputy Lavoie said he did not initially want to employ deadly force on the suspect so he ordered him to drop the bat at gunpoint. Deputy Lavoie said that since the suspect was already outside and he was the first deputy to arrive on scene, he did not have time to retrieve any less lethal weapon that he could use from a distance. Deputy Lavoie did not have a Taser because he let his trainee who was working a single person unit use his Taser for the shift. He did not have a bean bag gun because the weapons were being changed from Ithaca's to Remington's at that time.

Deputy Lavoie said the suspect lowered the bat and quickly threw it at him. He said the bat landed approximately five feet west of him on the asphalt. Deputy Lavoie said once the suspect no longer had the bat in his hands he gave the suspect commands to lay on the ground. The suspect complied. Deputy Lavoie said he notified Sheriff's Communication Center (SCC) via his handheld radio that he was detaining one suspect at gunpoint and waiting for additional deputies to arrive so the suspect could be safely handcuffed and taken into custody.

Deputy Lavoie said Deputy Saldivar arrived at the scene and positioned himself to the left of him. He said after Deputy Saldivar arrived, the suspect decided to get off of the ground, stand up, and assume a boxer's stance. Deputy Lavoie said at that point, he and Deputy Saldivar made a quick plan that Deputy Saldivar would take the suspect high, and that he (Deputy Lavoie) would take the suspect low, so they would not be struggling with the same body parts. He said he holstered his weapon. Deputy Lavoie said when the suspect got within six feet away from him, the suspect swung toward his (Deputy Lavoie's) face. He said Deputy Saldivar grabbed the suspect's upper body, and he grabbed the suspect's legs, and they performed a team takedown. Deputy Lavoie said he does not remember what position the suspect landed on the ground, and that it is highly likely the suspect may have hit his head on the ground.

> **IAB Note:** Deputy Saldivar said he put his arms around the suspect's upper body from behind and sat down with the suspect's back against his chest. He then rolled the suspect onto his stomach. Deputy Saldivar said the suspect never completely hit the ground because he was the buffer between the suspect and the ground, and the suspect's head was protected.

Deputy Lavoie said while they were trying to restrain the suspect on the ground and struggling to get his left hand in order to handcuff him, the suspect was pushing his body approximately six to eight inches off of the ground with his left hand, while both he and Deputy Saldivar were on his back. Deputy Lavoie said he hit the suspect two times in his head/face area in order to stop him from kicking and fighting. He said the force had no effect. He said he hit the suspect two more times which had little or no effect. He said he then used both of his hands to grab the suspect's left wrist as hard as he could in order to handcuff the left hand. Deputy Lavoie said he did not use pepper spray because it

might have contaminated he and his partner and it would have been counterproductive when dealing closely with someone with mental problems. He said he could have used his sap but the suspect would have probably suffered broken ribs or other broken bones. He said he wanted to deal with the situation with the least amount of force and he opted to use his personal weapons.

Deputy Lavoie said after the inmate was handcuffed, he advised SCC that he needed a Sergeant to bring a Taser because the suspect was still "amped" up and trying to move around. The suspect was cooperative by the time the next unit arrived, and he was taken into custody with no further incident. Deputy Lavoie said the entire incident lasted about three to four minutes.

Deputy Nicolas Saldivar, #[redacted] was interviewed on November 6, 2012, at 1052 hours by Sergeants Brenda Parker and Laura Haynes. The interview was audio recorded.

Deputy Saldivar said he was responding to a call where a deputy was detaining a person at gunpoint in the City of Lynwood. He said when he arrived at the scene, he saw Deputy Lavoie detaining the suspect at gunpoint. The suspect was lying on the ground on his stomach, with both of his arms stretched out to each side. He said the suspect appeared to be listening to what Deputy Lavoie was ordering him to do. Deputy Saldivar exited his patrol vehicle and communicated to Deputy Lavoie that he was there by saying, "Hey, I'm over to your left." Deputy Saldivar said he noticed that the suspect would bring his arms in like he was going to do a push-up to push himself off of the ground. Deputy Saldivar said he ordered the suspect to stay on the ground. He said the suspect did not comply with his order. He said he had been at the scene of the incident less than a minute when the suspect stood up. He said the suspect took a fighting stance, with both feet spread apart, and walked swiftly toward him and Deputy Lavoie.

Deputy Saldivar said he came from behind his patrol vehicle's driver's side door, and around the front of his vehicle to meet Deputy Lavoie and the suspect who was walking swiftly toward Deputy Lavoie. Deputy Saldivar said as the suspect quickly closed the distance he told Deputy Lavoie, "Hey, I'll go high you go low," planning a team takedown. Deputy Saldivar said he did not see any weapons on the suspect and felt that he and his partner could easily perform a team takedown and handle the situation without having to use any impact weapons at that time. Deputy Saldivar was carrying an ASP, OC spray, and a Pelican flashlight. He said because of the fact that the suspect closed the distance "real quick," he did not feel that OC spray would have been effective due to the fact it comes out in a stream and he did not know if he would have been able to target an area on the suspect's body where the spray would have been effective. He also believed that his Pelican flashlight and Asp would not have been effective in this particular situation.

Deputy Saldivar said when the suspect came within three to four feet from he and Deputy Lavoie, the suspect swung at Deputy Lavoie, missing him. He said the suspect was thrown off balance by the wild flailing of his arms and he (Deputy Saldivar) was able to

wrap his arms around the suspect's upper body in a "bear hug." He said with the suspect's back against his chest, he sat down on the ground in order to take the suspect to the ground. Once on the ground, he rolled the suspect over on his stomach. Deputy Saldivar said while he was on the suspect's back, the suspect continued to fight, kicking his legs and elbowing him. He said Deputy Lavoie attempted to control the suspect's legs as the suspect kicked.

Deputy Saldivar said the suspect continued to fight, elbowing him and kicking at Deputy Lavoie. He said he hit the suspect three times with a hammer fist in a downward motion on the top of his head/nose area. Deputy Saldivar said once he used that force, the suspect stopped elbowing him. He said he gained control of the suspect's arm, brought it behind his back, and applied a handcuff on his wrist. He said the suspect continued to kick and try to fight Deputy Lavoie. He communicated to Deputy Lavoie that he had control of the suspect's right arm and that he needed him to give him the suspect's left arm so they could complete the handcuffing process. Deputy Saldivar said the suspect continued to fight, swearing at them and trying to get up from the ground while he and Deputy Lavoie were on his back. He said they were eventually able to get the suspect's left hand behind him and handcuff both hands together.

Deputy Saldivar said he did not know what force Deputy Lavoie used because he was busy focusing on trying to roll in order to get the suspect off of him safely and under control. He said that at one point Deputy Lavoie put his hand on the suspect's upper back trying to control him, but he did not focus on what force Deputy Lavoie used.

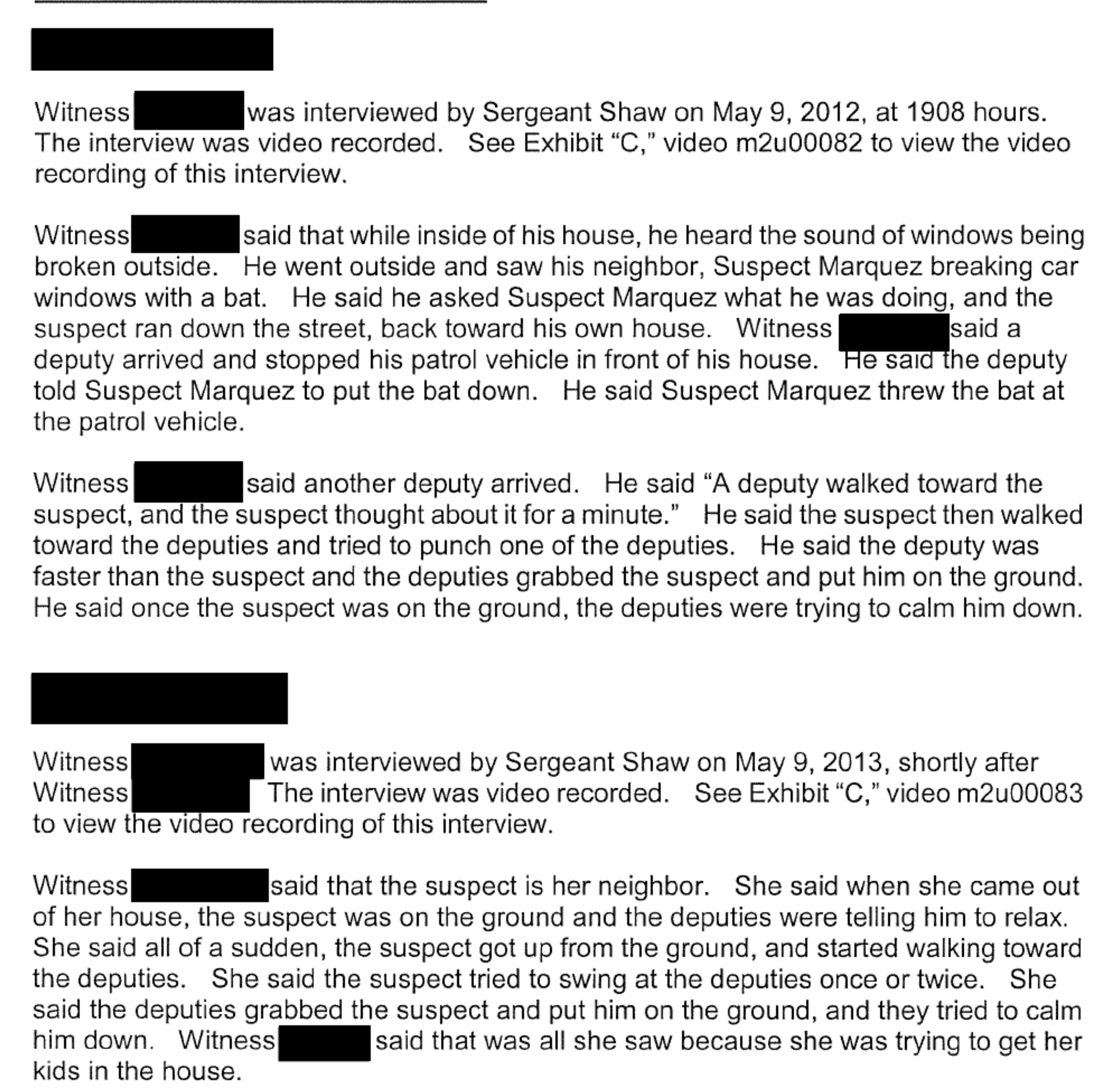
SWORN WITNESS STATEMENT:

Deputy Mike Vargas Machuka was interviewed by Sgt. Brenda Parker on April 9, 2013, via telephone. The interview was audio recorded.

Deputy Vargas Machuka said that on May 9, 2013, he was assigned to Aero Bureau and was flying in Air 21. He said he was working as the Tactical Flight Deputy. He said his duties as Tactical Flight Deputy are to respond to calls for service and any emergency or other types of calls to assist deputies on the ground, in order to keep them safe as well as to coordinate responding units and give a different perspective from the air.

Deputy Vargas Machuka said he does not recall if the deputies were at the scene when they (Air 21) arrived. He said he observed the deputies wait for back-up and stated the patrol cars in Lynwood are one person units. He said he saw two deputies attempt to make contact with the suspect. He said the suspect resisted the deputies. He said he does not remember any specific movements or strikes by the suspect, nor the deputies. Deputy Vargas Machuka said he put out radio traffic that the deputies were involved in a fight, in case the situation escalated. He said he took his eyes off of the deputies at that point in order to keep them safe, by watching all of the pedestrians that were out on the street to make sure no one came up behind the deputies. He also said he took his eyes off of the deputies so he could make sure there were clear streets and avenues to direct the responding deputies to their partners.

Deputy Vargas Machuka said he did not report the use of force to a supervisor at Aero Bureau, and felt that he reported the incident to other supervisors that were listening to the radio by stating over the radio that deputies were involved in a fight. He said he was not contacted by any supervisor to write a supplemental report.



CIVILIAN WITNESS' STATEMENTS:

[redacted]

Witness [redacted] was interviewed by Sergeant Shaw on May 9, 2012, at 1908 hours. The interview was video recorded. See Exhibit "C," video m2u00082 to view the video recording of this interview.

Witness [redacted] said that while inside of his house, he heard the sound of windows being broken outside. He went outside and saw his neighbor, Suspect Marquez breaking car windows with a bat. He said he asked Suspect Marquez what he was doing, and the suspect ran down the street, back toward his own house. Witness [redacted] said a deputy arrived and stopped his patrol vehicle in front of his house. He said the deputy told Suspect Marquez to put the bat down. He said Suspect Marquez threw the bat at the patrol vehicle.

Witness [redacted] said another deputy arrived. He said "A deputy walked toward the suspect, and the suspect thought about it for a minute." He said the suspect then walked toward the deputies and tried to punch one of the deputies. He said the deputy was faster than the suspect and the deputies grabbed the suspect and put him on the ground. He said once the suspect was on the ground, the deputies were trying to calm him down.

[redacted]

Witness [redacted] was interviewed by Sergeant Shaw on May 9, 2013, shortly after Witness [redacted] The interview was video recorded. See Exhibit "C," video m2u00083 to view the video recording of this interview.

Witness [redacted] said that the suspect is her neighbor. She said when she came out of her house, the suspect was on the ground and the deputies were telling him to relax. She said all of a sudden, the suspect got up from the ground, and started walking toward the deputies. She said the suspect tried to swing at the deputies once or twice. She said the deputies grabbed the suspect and put him on the ground, and they tried to calm him down. Witness [redacted] said that was all she saw because she was trying to get her kids in the house.

SUSPECT STATEMENT:

Marquez, Freddy

Suspect Freddy Marquez was interviewed May 10, 2012, at 0241 hours by Watch Commander, Lieutenant Strange. The interview was video recorded. See Exhibit "C," video m2u00086 to view the Watch Commander's interview.

Suspect Marquez said he hit his [redacted] and he was jumped by some Law Enforcement officers. He said he swung at the officers first, and they took him to the floor. Suspect Marquez said he received a broken cheek bone during the incident.

> **IAB Note:** See Exhibit "D," photograph of Suspect Marquez's injuries.

SUSPECT INJURIES:

Zygoma Fracture (Left cheek bone), Nasal Fracture (broken nose), Subconjunctival Hemorrhage (caused by broken blood vessels in the white portion of the eye).

DEPUTY PERSONNEL INJURIES:

Deputy Lavoie sustained a contusion and abrasions to his right hand.

PHYSICAL EVIDENCE:

Photographs of the scene, weapon, and suspect injuries were taken and are documented in this report.

INVESTIGATORS OBSERVATIONS:

The physical evidence in this case is corroborated by victim, witness and suspect interviews.

WEAPONS USED BY DEPUTY PERSONNEL:

Personal weapons-hands

WEAPONS USED BY SUBJECT:

Personal weapons-hands

PROPERTY DAMAGE:

None

CHARGES FILED AND DISPOSITIONS:

245(a) (4) PC- convicted, 3 years State Prison, 245(c) PC- convicted, 5years State Prison, 69 PC, Dismissed, 594(A) Dismissed

WEATHER AND LIGHTING CONDITIONS:

Clear and light outside